

Message Text

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ORIGIN EA-10

INFO OCT-01 ISO-00 AGR-05 CEA-01 CIAE-00 COME-00 DODE-00

EB-07 FRB-03 H-01 INR-07 INT-05 L-02 LAB-04 NSAE-00

NSC-05 PA-01 RSC-01 AID-05 CIEP-01 SS-15 STR-01

TAR-01 TRSE-00 USIA-06 PRS-01 SP-02 OMB-01 FEA-01

/087 R

DRAFTED BY EA/PRCM:RAHOLMES:CED
APPROVED BY EA/PRCM:OVARMSTRONG
EA/EP:AGEBER (SUBS.)
EB/IFD/OIA:TRBRODERICK
L/EB:SRBOND (INFO)
INR/DFR/REC:RKATES (INFO)
TREASURY:RGOODMAN (INFO)
TREASURY:WCMCFADDEN (INFO)
STR:SLANDE (INFO)
COMMERCE:DARRILL (INFO)

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R 292233Z JAN 75

FM SECSTATE WASHDC

TO AMCONSUL HONG KONG

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E.O. 11652: N/A

TAGS: EINV ETRD HK

SUBJECT: COUNTRY ELIGIBILITY FOR GENERALIZED PREFERENCES
(GSP) UNDER SECS. 502 (B) (4) AND (6) OF TITLE V OF
THE TRADE ACT OF 1974

REF: (A) STATE 282968; (B) STATE 282967

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THE FOLLOWING CABLE ON THE NATIONALIZATION AND ARBITRATION

AMENDMENTS TO THE TRADE ACT OF 1974 IS BEING SENT TO CONCERNED POSTS. WE DO NOT KNOW OF ANY ACTIONS TAKEN BY HONG KONG THAT WOULD MAKE IT INELIGIBLE UNDER THESE PROVISIONS OF THE TRADE ACT, BUT WOULD APPRECIATE CONGEN CONFIRMATION OF THIS. TEXT OF CABLE:

1. AS REPORTED REF B, BEFORE GSP CAN BE IMPLEMENTED UNDER THE TRADE ACT OF 1974, THE INTERNATIONAL TRADE COMMISSION (ITC) MUST INVESTIGATE THE DOMESTIC ECONOMIC EFFECT OF PREFERENTIAL DUTY-FREE TARIFF TREATMENT ON IMPORTS OF THOSE ARTICLES PROPOSED FOR SUCH TREATMENT FROM COUNTRIES DESIGNATED IN AN EXECUTIVE ORDER AS BENEFICIARY DEVELOPING COUNTRIES. THIS MESSAGE DISCUSSES COUNTRY ELIGIBILITY UNDER THE NATIONALIZATION AND ARBITRATION PROVISIONS OF THE ACT.

2. SEC. 502 (B) (4) OF TITLE V OF THE ACT PROHIBITS THE PRESIDENT FROM DESIGNATING AS ELIGIBLE FOR GSP ANY COUNTRY WHICH HAS NATIONALIZED THE PROPERTY OF U.S. CITIZENS (INCLUDING CORPORATIONS, PARTNERSHIPS OR ASSOCIATIONS 50 PERCENT OR MORE BENEFICIALLY OWNED BY U.S. CITIZENS), OR TAKEN OTHER ACTIONS WITH SIMILAR EFFECT, UNLESS HE DETERMINES THAT FAIR COMPENSATION IS BEING PAID, THAT SUCH COUNTRY IS "OTHERWISE TAKING STEPS TO DISCHARGE ITS OBLIGATIONS UNDER INTERNATIONAL LAW," OR THAT THE PARTIES HAVE SUBMITTED THE DISPUTE TO ARBITRATION. SEC. 502 (B) (6) APPLIES A SIMILAR PROHIBITION TO ANY COUNTRY WHICH FAILS TO ACT IN GOOD FAITH TO RECOGNIZE AS BINDING OR TO ENFORCE AN ARBITRAL AWARD IN FAVOR OF U.S. CITIZENS (AGAIN INCLUDING CORPORATIONS, PARTNERSHIPS OR ASSOCIATIONS 50 PERCENT OR MORE BENEFICIALLY OWNED BY U.S. CITIZENS). FYI. UNLIKE THE HICKENLOOPER AMENDMENT (SEC. 620 (E) OF THE FOREIGN ASSISTANCE ACT), SEC. 502 (B) (4) (D) REQUIRES A PRESIDENTIAL DETERMINATION TO BE MADE AND FURNISHED TO CONGRESS REGARDING THE APPLICATION OF THAT SUBSECTION TO ALL UNRESOLVED DISPUTES. THIS NEW REQUIREMENT REINFORCES THE NEED FOR THE USG TO MONITOR AND TO ASSIST IN RESOLVING OUTSTANDING DISPUTES INVOLVING U.S. PROPERTY. END FYI.

3. IT WOULD BE HIGHLY DESIRABLE FOR THE ITC TO UNDERTAKE LIMITED OFFICIAL USE

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ITS PRODUCT REVIEW WITH RESPECT TO THE BROADEST POSSIBLE LIST OF POTENTIAL BENEFICIARIES, AND FOR THE COMMISSION TO BEGIN ITS WORK AS SOON AS POSSIBLE. WE WOULD PREFER TO CONDUCT A DETAILED INVESTIGATION OF CASES WHICH MIGHT AFFECT HOST COUNTRY ELIGIBILITY UNDER SECS. 502 (B) (4) AND (6) WHILE THE ITC STUDY IS IN PROGRESS. FOLLOWING DISCUSSIONS WITH CONGRESSIONAL STAFFS, HOWEVER, IT IS NOT CLEAR THAT THE INTERIM WAIVER MENTIONED PARA. 4 REF. B

WILL BE USED. SEVERAL ALTERNATIVE METHODS OF ACCOMPLISH-
ING OUR OBJECTIVE ARE ALSO UNDER CONSIDERATION, BUT IT IS
POSSIBLE THAT DETERMINATIONS OF COUNTRY ELIGIBILITY
MAY HAVE TO BE MADE BEFORE THE ITC CAN BEGIN ITS PRODUCT
ANALYSIS.

4. ACCORDINGLY, POSTS ARE REQUESTED TO INFORM THE
DEPARTMENT ASAP OF THE STATUS OF OUTSTANDING CASES WHICH
MIGHT AFFECT HOST COUNTRY ELIGIBILITY UNDER SECS.
502 (B) (4) AND (6). COMMENTS SHOULD ENCOMPASS, BUT NOT
NECESSARILY BE LIMITED TO,...(KNOWN CASES INSERTED BY
DESKS/OIA). CITATION TO PRIOR REPORTING WILL SUFFICE IF
NO SIGNIFICANT DEVELOPMENTS HAVE OCCURRED IN THE INTERIM.

5. THE STARTING POINT FOR EVALUATION SHOULD BE THE TEXT
OF THE LEGISLATION ITSELF. UNTIL DEFINITIVE LEGAL
ANALYSIS OF SEC. 502 (B) (4) IS COMPLETED, POSTS SHOULD
ASSUME IT APPLIES TO ALL PROPERTY (BOTH COMMERCIAL AND
NON-COMMERCIAL) OF U.S. CITIZENS, WITHOUT REGARD TO VALUE.
AS A "RULE OF REASON," WE ARE LIMITING THE EVALUATION TO
CASES ARISING IN THE POST-WAR ERA, I.E., SINCE JANU-
ARY 1, 1946, OR THE DATE OF INDEPENDENCE OF THOSE
COUNTRIES RECEIVING INDEPENDENCE, WHICHEVER IS LATER.
SINCE SOME ACTIONS (SUCH AS COERCED PARTICIPATION,
SEVERE CURTAILMENT OF MANAGEMENT PREROGATIVES, OR FORCED
CANCELLATION OR RENEGOTIATION OF CONTRACTS) MAY BE
EXPROPRIATORY IN EFFECT WHILE STOPPING SHORT OF OUTRIGHT
TAKEOVER, POSTS ARE REQUESTED TO INFORM DEPARTMENT OF
SUCH CASES TO ENABLE US TO EXERCISE JUDGMENT IN DETERMIN-
ING WHETHER "NATIONALIZATION" HAS OCCURRED WITHIN THE
MEANING OF 502 (B) (4) (A)-(C). JUDGMENTS MUST ALSO BE
MADE TO DETERMINE, INTER ALIA, WHETHER THE CRITERIA OF
502 (B) (4) (D) ARE BEING MET, AND WHETHER "GOOD FAITH"
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IS PRESENT UNDER 502 (B) (6).

6. WOULD ALSO APPRECIATE MISSION COMMENTS REGARDING WHAT
STEPS USG MIGHT APPROPRIATELY TAKE TO BRING THESE PROVI-
SIONS TO THE ATTENTION OF HOST GOVERNMENT OFFICIALS, AND
TO ENCOURAGE RESOLUTION OF OUTSTANDING DISPUTES.
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: POLICIES, TRADE LAW, PREFERENTIAL TARIFFS
Control Number: n/a
Copy: SINGLE
Draft Date: 29 JAN 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: greeneet
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975STATE021073
Document Source: CORE
Document Unique ID: 00
Drafter: RAHOLMES:CED
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D750034-0150
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t1975019/aaaaahtk.tel
Line Count: 161
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN EA
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 75 STATE 282968, 75 STATE 282967
Review Action: RELEASED, APPROVED
Review Authority: greeneet
Review Comment: n/a
Review Content Flags:
Review Date: 11 JUL 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <11 JUL 2003 by CunninFX>; APPROVED <14 NOV 2003 by greeneet>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
05 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: COUNTRY ELIGIBILITY FOR GENERALIZED PREFERENCES (GSP) UNDER SECS. 502 (B) (4) AND (6) OF TITLE V OF
TAGS: EINV, ETRD, HK, US
To: HONG KONG
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 05 JUL 2006